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EXHIBIT

DATE

3-5-13

~~HS~~

SB 56

March 5, 2013

Chairman Miller and Members of the House Taxation Committee

During the hearing on SB 56 this morning, Representative Hansen asked me about legislation imposing additional duties on local governments, commonly referred to as "unfunded mandates". Copied below are the applicable sections of statute. Additionally, I have included the Annotations from the enactment of state assumption of elected county assessors, including the annotations. I believe that you will find the Compilers Comments, which includes the statement of intent to be of interest.

Thank you for the opportunity to provide this additional information and should you have any additional questions, please do not hesitate to ask.

Sincerely,

Harold Blattie, Executive Director

UNFUNDED MANDATES

5-4-210. Estimate of fiscal impact on local government required. (1) A bill that, if enacted, may require a local government unit to perform an activity or provide a service or facility that requires a direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of 1-2-112 or 1-2-113 must be accompanied, at the time that the bill is presented for introduction to the chief clerk of the house of representatives or the secretary of the senate, by an estimate of all direct and indirect fiscal impacts on a local government unit. The estimate of fiscal impacts must be prepared by the budget director in cooperation with a local government unit affected by the bill. The budget director has 10 days to prepare the estimate.

(2) The estimate must show in dollar amounts the increase in expenditures that may be required by the bill. Comment or opinion relative to the merits of the bill may not be included in the estimate. However, technical or mechanical defects may be noted. Upon completion of the estimate, the budget director shall submit the estimate to the requestor of the bill.

1-2-112. Statutes imposing new local government duties. (1) As provided in subsection (3), a law enacted by the legislature that requires a local government unit to perform an activity or provide a service or facility that requires the direct expenditure of additional funds and that is not expected of local

governments in the scope of their usual operations must provide a specific means to finance the activity, service, or facility other than a mill levy. Any law that fails to provide a specific means to finance any activity, service, or facility is not effective until specific means of financing are provided by the legislature from state or federal funds.

(2) Subsequent legislation may not be considered to supersede or modify any provision of this section by implication. Subsequent legislation may supersede or modify the provisions of this section if the legislation does so expressly.

(3) The mandates that the legislature is required to fund under subsection (1) are legislatively imposed requirements that are not necessary for the operation of local governments but that provide a valuable service or benefit to Montana citizens, including but not limited to:

(a) entitlement mandates that provide that certain classes of citizens may receive specific benefits;

(b) membership mandates that require local governments to join specific organizations, such as waste districts or a national organization of regulators; and

(c) service level mandates requiring local governments to meet certain minimum standards.

(4) Subsection (1) does not apply to:

(a) mandates that are required of local governments as a matter of constitutional law or federal statute or that are considered necessary for the operation of local governments, including but not limited to:

(i) due process mandates;

(ii) equal treatment mandates;

(iii) local government ethics mandates;

(iv) personnel and employment mandates;

(v) recordkeeping requirements; or

(vi) mandates concerning the organizational structure of local governments;

(b) any law under which the required expenditure of additional local funds is an insubstantial amount that can be readily absorbed into the budget of an existing program. A required expenditure of the equivalent of approximately 1 mill levied on taxable property of the local government unit or \$10,000, whichever is less, may be considered an insubstantial amount.

(c) a law necessary to implement the National Voter Registration Act of 1993, Public Law 103-31.

1-2-114. Bill restriction. (1) A bill may not be introduced enacting a new law or amending an existing law to require a local government unit to perform an activity or provide a service or facility that requires a direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of 1-2-112 or 1-2-113.

(2) The estimate of fiscal impact provided in accordance with 5-4-210 must be considered in determination of whether a bill is introduced in violation of subsection (1).

1-2-115. Enforcement. (1) A local government unit may use a remedy provided in subsection (2), (3), or (4) to prevent the application of a law enacted in violation of 1-2-112 or 1-2-113.

(2) A local government may, with the consent of a state agency charged with the implementation of the law, arbitrate the application of the law pursuant to the Uniform Arbitration Act.

(3) A local government unit may request a hearing before an administrative agency charged with the administration of the law. A hearing held pursuant to this section is a contested case proceeding pursuant to the Montana Administrative Procedure Act. The decision of the agency may be appealed in accordance with Title 2, chapter 4, part 7.

(4) A local government unit may bring a civil action in the district court of the county in which the local government unit is located to prevent the application of a law enacted in violation of 1-2-112 or 1-2-113. The state of Montana may be named as the respondent or defendant in an action brought pursuant to this section.

Information related to SB 56

Annotations from Title 15 – Taxation

Chapter 8 – Assessment Procedure

Part 1 – General Provisions

Part Compiler's Comments:

1993 Statement of Intent: The statement of intent attached to Ch. 27, Sp. L. November 1993, provided: "With the adoption of the 1972 Montana constitution, the state assumed responsibility for the appraisal, assessment, and valuation of property for property tax administration. Although the state was granted this new responsibility and authority by the constitution, county assessors were retained by local governments to assist the state in the assessment function, acting as agents of the department of revenue. Through the implementation and use of electronic data processing and other technological advances, many of the assessment functions previously performed by county assessors have changed dramatically.

Recognizing the need to make state and local government more responsive and efficient, it is the intent of the legislature that all appraisal and assessment duties relating to property taxation be assigned to the department of revenue. This action transfers from county assessors to the department the responsibility and authority to perform any assessment functions.

Acknowledging the talents and skills of county assessors, it is the intent of the legislature that current county assessors may choose to become employees of the department of revenue and that their respective counties may consolidate the office of county assessor with another county office.

If the current county assessor does not choose to become a state employee and the county chooses to retain the separate office of county assessor, the department of revenue shall, with the consent of the county assessor, contract with the county for the county assessor to perform specific duties as assigned by the department. If under this agreement the county assessor produces satisfactory work quality and output for the department, the department may continue the contract as long as the person currently serving as county assessor retains the position. The department may also contract for any successor county assessor in counties that retain the separate office of county assessor to perform duties assigned by the department.

It is further the intent of the legislature that all present deputy county assessors become employees of the department of revenue, with the same preferences and benefits as other state employees.

To allow for the efficient administration of the property tax appraisal and assessment, it is the intent of the legislature that the department of revenue use other efficiency measures, such as creating

regional county appraisal and assessment offices, adjusting office hours of department field offices, and restructuring the organizational structure of the property assessment division.

The legislature grants to the department of revenue general rulemaking authority for the accomplishment of these administrative changes."

1993 Special Session Amendment: Chapter 27 deleted (1) that read: "(1) The county assessors of the various counties of the state are agents of the department of revenue for the purpose of locating and providing the department a description of all taxable property within the county, together with other pertinent information, and for the purpose of performing such other administrative duties as are required for placing taxable property on the assessment rolls. The assessors shall perform such other duties as are required by law, not in conflict with the provisions of this subsection"; deleted (3) that read: "(3) The department must provide maps for the use of its agents, showing the private lands owned or claimed in the county and, if surveyed under authority of the United States, the divisions and subdivisions of the survey. Maps of cities and villages or school districts may in like manner be provided. The cost of making such maps is a state charge and must be paid from the state general fund"; substituted "department's assessment and appraisal staff" for "county assessor, his deputies and staff, and the state appraiser and staff"; deleted former last sentence that read: "Additional personal property required by the department for the assessor to perform his duties as agent of the department shall be provided by the department"; and made minor changes in style. Amendment effective January 1, 1994.

County Assessors to Become Employees: Sections 158 through 164, Ch. 27, Sp. L. November 1993, provided:

"Section 158. Assessors qualifying as employees. (1) A person serving as a county assessor on January 1, 1994, may qualify to become an employee of the department of revenue upon satisfying the following conditions:

(a) The assessor shall notify the department in a written statement received by January 4, 1994, of the assessor's intention to become an employee.

(b) The assessor shall resign from that office effective no later than January 24, 1994.

(2) This section does not apply to a person who is an assessor because the office of assessor was consolidated with another county office prior to [the effective date of this section] [effective December 27, 1993].

Section 159. Classification and salary for qualifying assessor. (1) The position for which a qualifying county assessor is employed as provided in [section 158] [not codified] must be classified in accordance with the classification standards for state employees.

(2) The initial salary for qualifying assessors is determined as follows:

(a) If an assessor's salary as established by resolution of the board of county commissioners for fiscal year 1994 is greater than the market salary under 2-18-312 [now repealed] for the grade of the

new position, the initial salary is the same as the amount set by the resolution of the board of county commissioners.

(b) If an assessor's salary as established by the board of county commissioners for fiscal year 1994 is less than the applicable entry-level salary under 2-18-312 [now repealed], the initial salary is the entry-level salary for the grade of the new position.

(3) If, after initial employment, a qualifying assessor is transferred to a different position because of a disciplinary action against the assessor, the assessor's salary must be determined according to the rules and policies governing employee disciplinary actions.

(4) If, after initial employment, a qualifying assessor voluntarily seeks and obtains a transfer to a different employment position, the person's salary must be based upon the grade classification of that new position without regard to this section.

Section 160. Benefits for qualifying assessors. (1) In addition to other benefits provided by law, county assessors qualifying for employment with the department of revenue under [section 158] [not codified] are entitled to the following benefits:

(a) credit for time served as an assessor for completing new employee probationary requirements and for determining years of service for annual vacation leave entitlements;

(b) an initial allowance of annual leave of 40 hours. Annual leave taken must first be credited against this initial allowance. Cash compensation is not allowed under 2-18-617 for any portion of this initial allowance that is unused at termination of employment.

(c) an initial allowance of sick leave of 40 hours. Sick leave taken must first be credited against this initial allowance. A lump-sum payment is not allowed under 2-18-618 for any portion of this initial allowance that remains at termination of employment.

(2) All uninterrupted time served as an assessor is considered as state service for the purposes of 2-18-304.

Section 161. Required employment -- department excused from hiring practices. (1) The department of revenue shall employ:

(a) any assessor who qualifies under [section 158] [not codified] to become an employee of the department; and

(b) deputy assessors appointed before November 12, 1993, with continuous service through January 4, 1994, who by that date make a written request for employment.

(2) The department is exempt from compliance with any statute, rule, or policy that requires competitive, formal hiring practices in employing qualifying assessors. Hiring preferences and the provisions of Title 2, chapter 18, part 12, do not apply to the hiring of eligible former assessors.

(3) Deputy assessors who become employees of the department are considered employees transferring between agencies of the same jurisdiction for the purposes of 2-18-617 and 2-18-618.

Section 162. Department contract for county assessor. (1) The department of revenue may, with the consent of the assessor, contract with the county for the assessor to perform assessment work as assigned by the department. Under this contract, the department shall reimburse the county for one-half of the wages and benefits of the assessor. An assessor performing work under this contract is not considered to be an employee of the department for any purpose. However, the department may pay the assessor's salary and benefits and be reimbursed by the county for the county's share of the salary and benefits.

(2) As a condition for the continuation of a contract under this section, the contract must provide that the assessor meet the qualification and certification standards required for department assessment personnel who perform comparable duties.

Section 163. Consolidation of office of county assessor -- special procedure -- transfer of records. (1) The board of county commissioners may consolidate the office of county assessor with another county office. For a consolidation under this section, the notice of hearing need only be published once, notwithstanding the provisions of 7-1-2121. The publication may not be less than 3 days prior to the date of the hearing. In all other respects, the notice must be published in accordance with 7-4-2307.

(2) If the assessor becomes an employee of the department of revenue as provided in [section 161] [not codified], the order of the county commissioners combining the offices under this section must be made and entered no later than January 14, 1994. After January 14, 1994, the office of the county assessor may be consolidated pursuant to Title 7, chapter 4, part 23.

(3) Notwithstanding the provisions of 7-4-2311, when an order is made under subsection (2) to consolidate the office of assessor with another office, the outgoing assessor shall deliver and transfer to the department all of the books, files, papers, documents, maps, plats, and records of the office. The department shall maintain necessary records and documents within the county for public access during normal business hours, unless the department needs the records and documents for appraisal purposes. The records and documents may be made available from county officials.

Section 164. State not obliged to reimburse county for assessor salary. Except for contracts under [section 162] [not codified] between the department of revenue and a county regarding its county assessor, the department may not pay or reimburse a county for any part of the salary or benefits earned by an assessor or deputy assessor after January 14, 1994." Effective December 27, 1993.

Office Hours: Section 166, Ch. 27, Sp. L. November 1993, provided: "Notwithstanding the provisions of 2-16-117, the department of revenue may determine by rule the office hours for property appraisal and assessment field offices located in the various counties. This section does not apply to any other offices of the department." Effective January 1, 1994.

Part Case Notes:

Supervisory Role of Department of Revenue Over County Assessor's Employees -- No Duty Owed to Assessor: Geiger sued the Department of Revenue, alleging that the Department was negligent in its management of the Dawson County Assessor's Office. The District Court granted the Department's motion for a directed verdict. The Supreme Court affirmed the District Court decision, holding that the Department had no duty to Geiger from which negligence could arise. The actions taken by the Department in reducing the number of employees in the Assessor's Office, supervising employees in the Office, withdrawing the delegation to the Assessor to hire and fire state employees, and issuing an audit report examining deficiencies in the Assessor's Office were all done pursuant to the statutory authority of the Department, which it carried out in a nonnegligent fashion. *Geiger v. Dept. of Revenue*, 260 M 294, 858 P2d 1250, 50 St. Rep. 1050 (1993).

Additional Sections requiring DOR to enter assessments on the county property tax rolls

85-7-2136. Collection of taxes or assessment. (1) On or before the third Monday in August of each year, the board of commissioners shall furnish to the department of revenue a correct list of all the district lands in the county, together with the amount of the total taxes or assessments against the lands for district purposes. **The department of revenue shall immediately upon receipt of the list enter the assessment roll in the property tax record of the county subject to taxation or assessment under 85-7-2104 for each year.**

(2) The county treasurer of each county in which any irrigation district is located, in whole or in part, shall collect and receipt for all taxes and assessments levied by the district, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. The treasurer must receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not.

(3) During the water delivery season, as determined by the irrigation district commissioners, the county treasurer shall make available to the board of commissioners of an irrigation district notice of the receipt of payments of district assessments by 9 a.m. on the day following receipt of those payments.

(4) If requested in writing by a board of commissioners of an irrigation district, the county treasurer may receive assistance from an employee of the irrigation district or a commissioner of the district for the purpose of collecting district assessments as provided in 15-16-102, investing district funds as directed by the board of commissioners of the district, and preparing district assessment notices.

(5) When any real estate on account of which the district taxes and assessments have been levied has been sold to the county and a tax lien sale certificate is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of the district tax or assessment, together

with the penalty and interest to date of payment on the installment. However, the payment may not be considered a redemption of the property from the tax lien sale but must be credited on account of any redemption that may be made. In case of any payment pursuant to this subsection, a separate tax receipt must be issued showing exactly what assessments have been paid and showing that no other tax on the real estate has been received by the treasurer. The county treasurer may not collect, receive, or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any irrigation district upon which an assessment for the purposes of the irrigation district has been levied unless the assessment levied for irrigation district purposes is either paid as permitted in this section and the receipt for the payment is presented to the county treasurer at the time the taxes are paid or paid at the time the irrigation district taxes are paid.

85-8-601. Certification and collection of district taxes. (1) Subject to 15-10-420 and on or before the third Monday in August of each year, the commissioners shall certify to the department of revenue a correct list of all the district lands in each county and the owners of the lands, together with a statement of the amount of the total tax or assessment against the lands for district purposes for that year. **The department of revenue shall immediately enter the assessment roll in the property tax record of the county for each year.**

(2) The county treasurer of each county in which a drainage district is located, in whole or in part, shall collect and receipt for all taxes and assessments levied by the district in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. However, the treasurer must receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not. When any real estate on account of which the district taxes and assessments have been levied has been sold to the county and the tax lien sale certificate is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of the district tax or assessment, together with the penalty and interest to date of payment on the installment. However, the payment may not be considered a redemption of the property from the tax lien sale, but must be credited on account of any redemption that may later be made. In case of any payment pursuant to this subsection, a separate tax receipt must be issued showing exactly what assessments have been paid and showing that no other tax on the real estate has been received by the treasurer. However, the county treasurer may not collect, receive, or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any drainage district upon which an assessment for the purposes of the drainage district has been levied unless the assessment levied for the drainage district purposes is either paid as provided in this section and the receipt is presented to the county treasurer at the time the real estate taxes are paid or paid at the time the drainage district taxes are paid.